

# *New Jersey Law Journal*

## **Creating Second Acts in Legal Careers**

*Retired lawyers tackle public interest after private practice*

**By Alicia Upano**

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When, at age 57, Warren Kaplan was forced to decide his future as a lawyer, his initial reaction was to join another firm or start his own.

It was 1993, and his Washington, D.C., firm was dissolving. Kaplan, a commercial litigator for the last 30 years, spent two weeks soul searching, then decided to switch gears completely -- he offered himself as an unpaid volunteer to the Washington Lawyers' Committee for Civil Rights and Urban Affairs.

They gave him a desk and a stack of civil rights cases. After a year and a half, he was hired as a part-time staff attorney, and he has been there ever since.

Now 67, Kaplan says, "I have the best job in town."

While Kaplan's situation may be unique, current data suggest that an unprecedented number of attorneys are reaching retirement age and facing decisions about how to spend their last years practicing law.

To pro bono advocates, this bumper crop of senior attorneys represents an opportunity to expand public-service lawyering. "If there's a way to redirect their actions to public interest pro bono work, then I think that's a gold mine for legal services," says Jan May, executive director of AARP Legal Counsel for the Elderly.

According to legal scholar Marc Galanter, law school enrollment began to grow annually in 1960, beginning at 15,607 students and leveling off in the low 40,000s after 1980. Precluding another enrollment surge, the ratio of older to younger lawyers will steadily increase.

This demographic shift presents law firms with a dilemma: How will they deal with the abundance of senior attorneys?

Galanter points to new policies at some firms lowering the mandatory retirement age or offering early retirement to make room for younger partners.

In fact, he says, the larger the firm, the fewer older lawyers it generally retains.

Pro Bono Institute President Esther Lardent has been following the senior attorney shift closely, and is optimistic about its implications for the pro bono cause.

Attorneys hitting retirement age are healthier and wealthier than their predecessors, she notes. While some will "work at their current job till the day they die," Lardent says she is continually fielding calls from senior attorneys who want to know more about public service opportunities.

But so far, it's happening attorney by attorney, she says, reminding her of how law firms tackled pro bono work years ago: The motivated found ways to take on pro bono cases, while others got lost in the shuffle or were consumed by paying work.

Though some legal services providers encourage senior attorneys to volunteer, according to Lardent, most offer minimal hours and don't take advantage of their high-level skills.

In order to widen the pro bono opportunities for older attorneys, a group of Washington lawyers formed the International Senior Lawyers Project in 2000. The group operates on the premise that senior attorneys can fill some important legal needs in the developing world.

Envisioned by Hogan & Hartson senior partner Robert Kapp, 69, and Clifford Chance retired partners Anthony Essaye, 69, and Robert Winfield, 70, the project has 150 active senior lawyer volunteers and numerous others on backup.

Project lawyers are currently helping set up public defender offices in Eastern Europe and a public interest law network in India.

"It's been very, very exciting," says Kapp. "There's just a lot of people who feel they still have something to contribute and are looking for fulfillment in ways they couldn't get in practice."

The project has been awarded several grants that cover the costs and salaries of a full-time executive director and intern, but all volunteers pay their own expenses.

Kapp searches for recent or soon-to-be retired lawyers to work within a firm and take primary responsibility for a project. The volunteers can then draw upon the pro bono help of their law firm colleagues as needed.

While the project offers novel opportunities for senior attorneys looking to do groundbreaking work, other advocates are hoping to direct the energy of interested seniors to the poor, where it is needed most.

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Howrey Simon Arnold & White retired partner A. Duncan Whitaker, 71, is one who is answering the call.

Whitaker is a 40-year antitrust veteran who went from working with the in-house counsel of large corporations to counseling the poor at the Archdiocesan Legal Network, one of

the Catholic Charities of the Archdiocese of Washington's public legal services.

"It's opened a whole world for me," Whitaker says. "I've been an attorney for so long. I felt an obligation to use my legal background."

Through the firm's pro bono partner, Whitaker came across the Archdiocesan Legal Network. After being won over by the organization's executive director, James Bishop, Whitaker signed on as a weekly intake attorney. He now assists several clients each Tuesday morning, all of whom meet the federal guidelines for poverty. His new clients bring a variety of issues, many novel to his practice, such as domestic problems and personal bankruptcy.

Skadden, Arps, Slate, Meagher & Flom pro bono D.C. partner Douglas Robinson, 60, decided five years ago to devote more time to public interest work.

"There comes a point where you feel like you've sort of proven yourself and accomplished what you set out to accomplish in your chosen field," he says. "It's sort of facing a choice: Do I really need all the money I'd be making if I continued to work full time, or can I give that up for the intangible rewards of working in the public interest?"

Robinson wanted to devote 40 percent of his billable hours to pro bono, and asked the firm for less compensation so he could "be more flexible with my life without feeling guilty about it," he says. The firm agreed, and he is currently working on several death row cases.

Mayer, Brown, Rowe & Maw has developed a formal policy to deal with situations like Robinson's. The policy allows any lawyer over age 55 to slowly phase into early retirement at 60 or mandatory retirement at 65, with a reduced compensation and a minimum hourly target. The attorneys can count all pro bono and mentoring work among their hours. All age-eligible attorneys meet with the managing partner to discuss whether to increase their pro bono load or continue their practice until retirement.

The policy is based on the independent work of Mayer Brown partner Adrian Steel, 53, on the Senior Public Interest Lawyer Project.

In 2000, Steel helped develop the project along with more than 20 representatives from law firms, legal service providers and bar associations. In essence, the project encourages firms to adopt policies similar to Mayer, Brown's.

Other lawyers have charted their own course. Latham & Watkins retired partner William Kelly Jr., for example, remains busy working on low-income housing issues, but is no longer practicing law.

Kelly, one of the eight founders of Latham's D.C. office, spent several years of his career in the U.S. Department of Housing and Urban Development, where he helped develop low-income housing programs.

Now, he's formulating a strategy to take on a problem that has long concerned him: Expiring provisions on publicly subsidized housing that allow private owners to sell property at market price. "I came to the conclusion that I was not making as much progress on this problem as I should, and continuing to practice was standing in the way of that," Kelly says.

"Challenging" is how Whitaker describes the transition into public interest law. Whitaker was accustomed to working with well-organized corporate clients who were often well-versed in the law. Now, he works with clients who are not used to dealing with attorneys, and he sometimes communicates with his clients through a translator, if they don't speak English.

Attorneys who have spent their careers working with corporate clients at a law firm and moved to public interest law may have to do some adjusting.

May of AARP has been working with senior lawyers for many years. Solo and small-firm practitioners generally transition well into working with low-income elderly clients, May says.

But attorneys from midsize and large firms are unaccustomed to working with clients in poverty and sometimes struggle to communicate with them effectively, he continues.

Despite obstacles, Mayer Brown's Steel goes so far as to say that today's senior attorneys are "predisposed" to public interest law, because many may be returning to their early aspirations.

Indeed, Kaplan of the Washington Lawyers' Committee for Civil Rights says he has simply reverted back to the track he thought he'd be on when he graduated from Harvard Law School in 1960.

"I was very idealistic and thought that I could make a difference -- help people and help society," he says. While he enjoyed his work as a commercial litigator, he says, he has found public interest law "generates enormous psychic income," providing a deeper satisfaction.

To Kaplan and his peers, it's not retirement, it's a second career. And they'll keep at it, Kaplan says, until they can no longer carry the briefcase.